

No. 9(1981-6-Lab/14328).—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the disputes between the workman and the management of M/s Industrial Ancillaries Pvt. Ltd., 20th Mile Stone Delhi-Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Present—

Reference No. 224 of 1980

between

SHRI GOPI RAM WORKMAN AND THE MANAGEMENT OF M/S INDUSTRIAL ANCILLARIES
PRIVATE, LIMITED, 20TH MILE STONE, DELHI-MATHURA ROAD, FARIDABAD

Shri Sagar Ram for the workman.

Shri R.C. Sharma for the respondent management.

AWARD

This reference No. 224 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,— vide his order No. ID/SB/35-80/19434, dated 25th April, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Gopi Ram, workman and the management of M/s Industrial Ancillaries Private Limited, 20th Mile Stone, Delhi-Mathura Road, Faridabad. The terms of the reference was :—

Whether the dismissal of Shri Gopi Ram was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were issued to the parties. The parties appeared and filed their pleadings. According to the demand notice and claim statement of the workman, the case of the workman is that the workman joined the service of the management on 1st March, 1977 at Rs. 710 per month. He was the President of Plycast Union and gave a demand notice on 15th April, 1979 to the Managing Director of the respondent. The respondent asked the union to settle it, but on the occasion of Dewali they called the workman in his office and asked to withdraw the demand notice otherwise it is not good for him. The workman refused to withdraw before the other office bearers of the union on which owner of the factory was very much annoyed. They also suggested the senior officer to ask the workman to withdraw the demand notice. The owner of the factory did not by bonus in annoyance and with the pressure of other office bearers the demand notice was withdrawn. The respondent gave a charge sheet on 25th November, 1979 to the workman to take a revenge of that annoyance and the enquiry was fixed. The respondent did not provide the facilities to the workman which were demanded by him. The enquiry officer did not supply the copies of day to day proceedings of the enquiry. The enquiry officer did not care the requests of the workman during the enquiry proceedings. The enquiry officer took the witnesses which were not in the list of the management. The Enquiry Officer did not provide the copy of the standing order as there were 20 workmen working in the factory. So the holding of the domestic enquiry was not proper as there was no standing orders applicable to them. The workman was not provided the copy of the evidence of the enquiry proceedings and the workman was given very short time to reply the chargesheet and no show-cause notice was given. In this way the respondent had worked in a revengeful manner and dismissed the workman illegally. The workman prayed for his reinstatement with full back wages and continuity of service.

The case of the respondent according to their written statement is that the reference is bad in law and incompetent on the following grounds :—

A fair domestic enquiry was held keeping in view norms of natural justice allowing participation of Shri Sunehri Lal who is outsider—not working in the factory and acting as General Secretary of Plycast Workers Union. The workman was allowed to cross-examine the all witnesses produced by the management. He was supplied the photostat copy of the complaint of Shri V.K. Mehra along with list of witnesses. As there was no standing order in the company so the question of supply of the certified standing orders does not arise. Shri Sunehri Lal assisted the workman in day-to-day proceedings and he was allowed adjournment of the enquiry proceedings as and when desired by the workman on account of any reason. The workman participated in the enquiry from starting i.e. 28th December, 1979 to the close of enquiry, dated 28th January, 1980. The enquiry proceedings were supplied to the workman and he had acknowledged the same. He was adjudged guilty of the charges by the enquiry officer and the management concurring with the findings of the enquiry officer dismissed the workman. As the workman was allowed all the facilities based on the norms of natural justice and fair and impartial enquiry was held and participation throughout the enquiry along with Shri Sunehri Lal, Trade Union Leader and General Secretary of Plycast Workers Union. The workman was charged on the basis of written complaint, dated 25th November, 1979 of Shri V. K. Mehra, Foreman. The workman submitted his,

explanation denying the charges levelled against him in the chargesheet. After considering the reply the management decided to afford an opportunity to Shri Gopi Ram through the domestic enquiry and Shri P. K. Shungloo Accountant was appointed as enquiry officer, —vide letter dated 29th November, 1979. All facilities were provided, to the workman which he demanded through his letter, dated 3rd December, 1979. Even the management allowed participation of Shri Sunehri Lal who is not factory worker but a trade union leader and acting as General Secretary, Plycast Workers Union. The workman was allowed 5 adjournments on written requests of the workman on 17th December, 1979, 26th December, 1979, 28th December, 1979, 12th January, 1980 and 15th January, 1980. All the witnesses invariably testified directly or indirectly the incident of misbehaviour of this workman with Shri V. K. Mehra on the morning hours between 7.00 a.m. and 8.00 a.m. on 25th November, 1979. The workman himself admitted the facts in his own statement the reasons of exchange of hot words with Shri V.K. Mehra on issue of absence on 24th November, 1979. The workman was adjudged guilty of gross misconduct, charge of indiscipline and using of un-parliamentary language and violence against Shri V.K. Mehra, a Foreman of the Company in presence of the workers assembled there. After considering the evidence before the enquiry officer and reply filed by the workman, the respondent management dismissed the workman, —vide his letter dated 4th February, 1980. They further stated that the workman was appointed on 1st March, 1977 at Rs. 490 per month and not at Rs 710 p.m. The respondent has denied about any demand notice remain pending before the Conciliation Officer. The respondent also denied the pressure by them for the withdrawal of the demand notice. On the contrary they have stated that the Director Incharge was out of India during that period. The copies of the proceedings were supplied to the workman which were duly acknowledged by him. The workman and his representative signed the enquiry proceedings when they were fully satisfied. If they were not satisfied they would have not signed the enquiry proceedings. The workman never raised any objection in the course of enquiry proceedings. So the pleadings made at this stage are vague and irrelevant. The enquiry was held on the basis of norms of justice as laid down by the Supreme Court of India and was offered full opportunity by supplying copy of complaint allowing participation of an outsider who is a Trade Union Leader, giving adjournments as and when requested by the workman without substantial reasons, allowing him to reduce his defence evidence and giving copies of proceedings which were fully acknowledged by the workman. He was also allowed to read each page of the Enquiry Proceedings daily and the workman with his representative used to sign after reading the enquiry of each page of proceedings. The management re-employed the workman who had already resigned voluntarily from M/s Plycast (Delhi) Pvt. Ltd., and was given employment with effect from 1st March, 1977 and as such victimisation does not arise as the same facts have been admitted by the workman. On the pleadings of the parties, the following issues were framed :—

- (1) whether the domestic enquiry conducted by the respondent management is proper and fair ?
If so, to what effect ?
- (2) whether the dismissal of services of the workman is justified, fair and proper ? If not, to what relief is he entitled ?
- (3) Relief ?

According to the orders of my predecessor Issue No. 1 shall be treated as preliminary issue. My finding on Issue No. 1 is as under :—

Issue No. 1.—The respondent's representative argued on this issue that on 25th November, 1979 the workman came in the factory at about 8.00 a.m. and approached the foreman Shri V.K. Mehra asking him to correct his mark absent for 24th November, 1979 and he abused the foreman in the presence of other workmen standing there. The foreman made the written complaint of the workman and was chargesheeted and suspended on his misbehaviour and misconduct. The workman was given chargesheet Ex. M-7 along with formal complaint. The same was replied by the workman and after considering the same the respondent constituted a domestic enquiry to give another opportunity to the workman and appointed enquiry officer, —vide Ex- M-6. The workman asked for certain facilities during the course of enquiry which were provided by the enquiry officer. The list of witnesses and another documents relied upon were also supplied to the workman before the start of the enquiry proceedings. The workman demanded Shri Sunehri Lal, General Secretary of the Union of the Ply-Cast Workers Union, to represent in the enquiry proceedings. Though he was outsider and not the workman of the factory even then he was allowed to represent the workman in the enquiry proceedings. The enquiry officer accommodated the workman upto very extent. He gave 5 or 6 adjournments on the written requests of the workman which are admitted by the workman. The reasons given in those requests though not genuine, but the enquiry officer wants to accommodate the workman and wants to give full opportunity to the workman. The representative of the workman Shri Sunehri Lal, who is leader of the Trade Union and also represents the case in the courts, was with the workman throughout in the enquiry. The enquiry officer gave the opportunity to the workman with his representative to cross-examine the management witnesses and gave his own defence witnesses fully well. The copies of the enquiry proceedings were given to the workman and day-to-day proceedings of the enquiry were signed by the workman and his representative. The proceedings were also read out to both the representatives and the workman and both were fully satisfied with the proceedings of the enquiry officer in the enquiry. They raised no objection against the enquiry officer or the representative of the management for any facility or any misbehaviour. They were fully satisfied with the proceedings done by the enquiry officer in the enquiry proceedings. After the proceedings of the enquiry closed on 28th January, 1980, the enquiry officer submitted his report adjudging the workman guilty of gross misconduct, charge of indiscipline, using of un-parliamentary language and violence against Shri V. K. Mehra, a Foreman of the company in presence of the workers assembled there. He argued the enquiry report itself was very clear, contained 11 pages in which the enquiry officer has given everything happened in the enquiry. After going through the findings of the

enquiry officer and the replies of the workman the management dismissed the workman on 4th February, 1980. The respondent could not provide the certified standing orders of the company to the workman as they were not applicable to the factory as admitted by the workman in his claim statement that there was only 20 workers working in the factory. The enquiry officer formed his findings on the basis of witnesses of both the sides. There can be no fair enquiry even after so much facilities given to the workman according to his satisfaction and without raising any objection during the course of enquiry? So it was a fair and proper enquiry giving all facilities according to the rules of natural justice.

The representative of the workman argued that the workman was the president of the union and a demand notice was given to the management and management asked to withdraw the same but the workman as president refused to withdraw the same. So the chargesheet was given on 25th November, 1979 which was false and wrong. No facility was given to the workman. The copies of the proceedings were not given to the workman by the enquiry officer. The enquiry officer was biased and allowed managements witnesses outside the list of witnesses given to the workman. The standing orders and other documents were not given to the workman. The appointment letter of the enquiry officer was not supplied. No enquiry report was given. The workman was given a very small time to reply the chargesheet and no show-cause notice was given to him before terminating the service of the workman. In the chargesheet there was no name given for the formean which was a vague chargesheet. No enquiry could be held on such a vague chargesheet. The representative of the workman referred 1979 LLN Page 190 and 1978 LLN page 242 for the vague charges, but the workman's representative has not given the books for my consideration. He cited this book from his copy. In the list of witnesses of the respondent management there were 13 names given but in the enquiry same list was not taken up. There was an addition in the list and gives six more witnesses. Ex. M-22 list of witnesses dated 13th January, 1980 which was allowed by the enquiry officer shows the enquiry officer's interests. The opportunity was denied to the workman by adducing additional witnesses. The copies of the complaint was given to the workman on 6th December, 1979. As such no full opportunity was given to the workman and it was denied. He further argued that the enquiry officer changed the enquiry record before giving the copies of the same to the workman. The enquiry officer did not provide the first page of the enquiry to the workman. He further argued that there are some documents which were not part of the enquiry record are submitted in the Court. The respondent had not come with clean hands. The enquiry officer had allowed the representative of the management to lead questions to his witnesses. The final enquiry report was not supplied to the workman which was very essential in the interest of justice. The workman again cited 1975-LIC-Supreme Court-Page 1493 ; 1980 LIC 393 (Bombay) from his copy and not given the books.

After hearing the arguments of the parties and going through the whole file and enquiry proceedings, I am of the view that the workman has given all facilities which were demanded from the respondent and the enquiry officer had accommodated the workman reasonably. So in my view, the domestic enquiry held by the enquiry officer is fair and proper with full facilities given to the workman. Shri Sunehri Lal allowed to represent the workman, who is a union leader who also appears in the courts and know every process of enquiry. He had not raised any objection during the course of enquiry. It shows that there was no such thing during the course of enquiry that the enquiry officer has not proper by accommodated or opportunity was not given to them. If there was any such thing in the course of enquiry proceedings, they might have raised the objection which could be seen at the time of arguments, but there is no such objection shown to me during the course of arguments. The list of witnesses with all relevant documents were given to the workman before the start of the enquiry. Enquiry proceedings were signed by both the workman and his representative and the copy of the proceedings were given to them. The Enquiry Officer also had given his detailed report in Ex- M-21. So, in view of the above discussions, I feel that the enquiry is fair and proper and this issue is decided in favour of the management and against the workman.

Issue No. 2.—This issue No. 2 is as per reference? After giving the decision on preliminary issue in favour of the respondent management that the enquiry was fair and proper. Then there is nothing remains to discuss for unjustification of termination order. The respondent is quite justified in dismissing the workman on the charge of mis-conduct and mis-behaviour with his superior officers, who is the incharge of the whole factory after Managing Director as he has stated in his statement as MW-1 and on a wrong point when the workman was absent on 24th November, 1979, then what was the need to quarrel with the superior officer to correct his absent marked. It affects the other workmen of the factory. If the workman was not treated in this way, the other workmen may have treated the other officer of the company in the same way. So to create healthy atmosphere in the factory, this action of the management was justified. So the workman is not entitled for any relief and this issue is decided against the workman and in favour of the management. No order as to costs. The parties did not reserve the right to adduce further evidence on issue No. 2 and argued the reference in full. So I decided the reference.

This be read in answer to this reference.

Dated the 14th November, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 3304, dated 27th November, 1981.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.